

United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

June 9, 2022

## Memorandum

**To:** Members, Committee on Financial Services  
**From:** FSC Majority Staff  
**Subject:** June 14, 2022 Full Committee Markup

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The full Committee will convene to mark up the following measures, in an order to be determined by the Chairwoman, at 10:00 AM on Tuesday, June 14, 2022, and subsequent days if necessary, in a hybrid format in room 2128 of the Rayburn House Office Building as well as on the WebEx platform.

**1. Amendment in the Nature of a Substitute to H.R. 68, the “Housing Fairness Act of 2021” (Rep. Green)**

**Summary:** The Amendment in the Nature of a Substitute (ANS) to H.R. 68 would authorize increased funding for the Department of Housing and Urban Development’s (HUD) Fair Housing Initiatives Program (FHIP) and make a number of reforms to FHIP. It would also establish a new competitive grant program at HUD to support comprehensive studies of the causes and effects of ongoing discrimination and segregation, and the implementation of pilot projects to test solutions.

**Background:** The Fair Housing Act of 1968, as amended, made discrimination in the housing market illegal based on race, color, sex, religion, national origin, disability, and familial status, and required that HUD enforce the law. Later, Congress went on to authorize HUD’s Fair Housing Initiatives Program (FHIP) in 1987 under Section 561 of the Housing and Community Development Act to support the work of private fair housing organizations conducting local fair housing complaint intake, private investigations, and public education and outreach, among other activities.

Since its inception, FHIP has become a central component of the nation’s fair housing enforcement infrastructure. FHIP grantee organizations processed over 73 percent of all housing discrimination complaints in 2020—three times the amount of complaints processed by all federal agencies.<sup>1</sup> Yet, FHIP funding levels and the activities allowed under the program constrain enforcement needs in the face of a rapidly evolving U.S. housing market, increased housing discrimination complaints, and documentation of ongoing industry practices that are in direct violation of federal fair housing and fair lending laws.

The ANS to H.R. 68 authorizes just over \$1 billion over 11 fiscal years to fully support the federal government’s responsibility to enforce the Fair Housing Act, which has gone underfunded for decades—reflected in ongoing housing discrimination, growing inequity, and increased residential segregation. This includes: FHIP reauthorization of \$978.5 million over 11 fiscal years, authorization of \$45 million for new eligible FHIP activities over 11 fiscal years, authorization of \$25 million over five fiscal years for a new grant program, and authorization of \$3 million for HUD to conduct an assessment of the FHIP program. These amounts were requested by the National Fair Housing Alliance (NFHA) and reflect both NFHA and HUD’s estimates of the funding levels necessary to support the various activities authorized in this bill. The bill also makes several reforms to FHIP that include the addition of eligible activities

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<sup>1</sup> NFHA, Fair Housing Trends Report (2021).

under a new National Testing Initiative that will allow national and regional investigations into housing discrimination, which there is not currently dedicated funding for. The bill also requires HUD to fully comply with and expend all funds made available for education and outreach activities under FHIP, reinstate the 2015 Affirmatively Furthering Fair Housing Rule, and require HUD to fully comply with all complaint intake, investigation, and response requirements under the Fair Housing Act. Finally, the bill creates a competitive grant program at HUD to support comprehensive, publicly available studies of the causes and effects of ongoing housing discrimination and segregation, as well as the implementation of pilot projects to test solutions.

This bill is supported by the following organizations: NFHA, National Low Income Housing Coalition, National Association of Realtors, Appraisal Institute, Asian Real Estate Association of America.

**Section-by-Section:** [See Appendix A.](#)

## **2. Amendment in the Nature of a Substitute to H.R. 3111, the “Grandfamily Housing Act of 2021” (Rep. McGovern/Pressley)**

**Summary:** The ANS to H.R. 3111 would authorize \$100 million to establish a pilot program at the Department of Housing and Urban Development (HUD) to support the housing needs of intergenerational families through supportive services.

**Background:** Grandparent-led families encounter unique challenges in supporting their grandchildren in meeting their basic needs. Intergenerational families are often unable to afford the additional costs of raising children, such as health care and childcare, and are forced to make financial compromises. Furthermore, a study finds that the number of Americans living in a multigenerational household has nearly quadrupled over the past decade.<sup>2</sup> Right now, there are 2.7 million children being raised by their grandparents, and that number is only expected to grow.<sup>3</sup> However, less than one-third of eligible grandfamilies receive housing assistance.<sup>4</sup>

To assist intergenerational families, the ANS to H.R. 3111 would authorize \$100 million to establish a pilot program at HUD to allow nonprofit organizations and local housing authorities to: 1) hire service coordinators to provide onsite services to intergenerational families, including tutoring and afterschool care; 2) facilitate outreach to intergenerational families; 3) plan and provide services to intergenerational families, and 4) maintain spaces for programing and services for intergenerational families.

This bill is supported by the following organizations: National Council on Aging, Generations United, LeadingAge, National Low Income Housing Coalition

**Section-by-Section:** [See Appendix B.](#)

## **3. Amendment in the Nature of a Substitute to H.R. 4277, the “Overdraft Protection Act” (Rep. Maloney)**

**Summary:** The ANS to H.R. 4277 would strengthen protections and disclosures under the Truth In Lending Act (TILA) for consumers with respect to overdraft fees. Among other things, it would limit the number of overdraft fees a bank may charge on a monthly and annual basis, prevent financial institutions

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<sup>2</sup> Generations United, [Family Matters: Multigenerational Living Is on the Rise and Here to Stay](#), (2021).

<sup>3</sup> Advisory Council to Supportive Grandparents Raising Grandchildren, [Supporting Grandparents Raising Grandchildren \(SGRG\) Act: Initial Report to Congress](#) (Nov. 16, 2021).

<sup>4</sup> N.Y. Times, [‘Grandfamily’ Housing Caters to Older Americans Raising Children](#) (Aug. 24, 2021).

from re-ordering transactions to increase overdraft fees, and codify the rule requiring financial institutions to provide consumers with the opportunity to opt-in to overdraft coverage for all transactions.

**Background:** An “overdraft” occurs when a consumer carries out a transaction of an amount that exceeds the balance in their checking account, and their financial institution allows the transaction to proceed by covering the difference.<sup>5</sup> In many cases, financial institutions charge an overdraft fee for this service, which can be as high as \$36 per overdraft, and institutions can repeatedly charge this fee for multiple transactions in the same day.<sup>6</sup> Similarly, when a consumer does not have enough funds available in their account at the time of a transaction (e.g., a check bounces), a financial institution can reject the transaction and may issue a non-sufficient funds (NSF) fee.<sup>7</sup>

During the Great Recession following the 2008 global financial crisis, financial institutions’ revenue from overdraft fees soared as consumers lost jobs and experienced disruptions in income.<sup>8</sup> In response, Rep. Carolyn Maloney introduced the “Overdraft Protection Act,” and federal banking regulators began examining overdraft practices and fees.<sup>9</sup> In November 2009, the Board of Governors of the Federal Reserve System (Fed) issued a final rule on overdraft programs.<sup>10</sup> The rule, also known as the “Opt-In Rule,” requires certain consumer notifications and prohibits financial institutions from issuing fees associated with “overdrafts on automated teller machine (ATM) and one-time debit card transactions unless a consumer consents, or opts in, to the overdraft service for those types of transactions.”<sup>11</sup> In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which created the Consumer Financial Protection Bureau (CFPB) and granted the new agency authority over many consumer protections in banking, including the Fed’s Opt-In Rule.<sup>12</sup>

Traditionally, banks and credit unions generate revenue by taking deposits and lending the deposits out in the form of home mortgages, business loans, or other forms of credit. Banks then collect interest on those loans.<sup>13</sup> Beginning in the 1980s, non-interest revenue, such as fees associated with customer accounts, started to grow and has since become a sizable portion of overall revenue for financial institutions.<sup>14</sup> While evidence suggests banks have become less reliant on non-interest revenue in the years following the financial crisis, one analysis found that “banks have increased their revenues from service charges to make up for interest income lost in the low-interest rate environment.”<sup>15</sup>

Since 2015, federal regulators have required banks and credit unions with more than \$1 billion in assets to report revenue collected specifically from overdraft and NSF fees, and based on these reports, these fees total between \$11 billion and \$12 billion in profits annually for the larger depository institutions.<sup>16</sup> In December 2021, the CFPB reported that “overdraft and NSF fees made up close to two-thirds of reported fee revenue, emphasizing banks’ heavy reliance on such fees.”<sup>17</sup> According to the same research,

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<sup>5</sup> See CFPB, [Bank accounts key terms](#) (Accessed Mar. 15, 2022).

<sup>6</sup> See CFPB, [Overdraft/NSF metrics for Top 20 banks based on overdraft/NSF revenue reported](#) (Feb. 2022); see also MyBankTracker, [Compare Overdraft Fees of Top Banks](#) (Feb. 23, 2022).

<sup>7</sup> CFPB, [Data Point: Overdraft/NSF Fee Reliance Since 2015 – Evidence from Bank Call Reports](#) (Dec. 2021).

<sup>8</sup> See CNN, [Bank overdraft fees to total \\$38.5 billion](#) (Aug. 10, 2009).

<sup>9</sup> H.R.3904, (111th Congress); see also Reuters, [U.S. lawmakers attack bank overdraft fees](#) (Oct. 30, 2009); and CRS, [Overdraft: Payment Service or Small-Dollar Credit?](#) IF11460, (Mar. 16, 2020).

<sup>10</sup> Federal Reserve, [Federal Reserve announces final rules prohibiting institutions from charging fees for overdrafts on ATM and one-time debit card transactions](#) (Nov. 12, 2009).

<sup>11</sup> *Id.*

<sup>12</sup> CRS, [Overdraft: Payment Service or Small-Dollar Credit?](#) IF11460, (Mar. 16, 2020).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Federal Reserve Bank of Cleveland, [Trends in the Noninterest Income of Banks](#) (Sept. 24, 2019).

<sup>16</sup> CRS, [Overdraft: Payment Service or Small-Dollar Credit?](#) IF11460, (Mar. 16, 2020).

<sup>17</sup> CFPB, [CFPB Research Shows Banks’ Deep Dependence on Overdraft Fees](#) (Dec. 1, 2021).

total NSF and overdraft fees collected by financial institutions reached an estimated \$15.5 billion in 2019 before declining to \$8.8 billion in 2020.<sup>18</sup>

In recent months, the CFPB has launched an initiative to investigate exploitative fees charged by financial institutions.<sup>19</sup> Meanwhile, some depository institutions have either announced plans to, or have already eliminated, overdraft and NSF fees,<sup>20</sup> while others have announced plans to reduce overdraft and NSF fees, including reducing the amount of the overdraft fee or reducing the number of fees the bank can charge you each day.<sup>21</sup> According to the CFPB, since September 2021, among the top 20 banks based on overdraft or NSF revenue reported, nearly half announced they will eliminate NSF fees, and several already had limited overdraft fee programs in place, such as not charging overdraft fees on debit card purchases or ATM withdrawals or extended overdraft fees.<sup>22</sup> Acting Comptroller Michael Hsu of the Office of the Comptroller of the Currency (OCC) wrote a recent op-ed urging more banks to make pro-consumer reforms to their overdraft programs.<sup>23</sup> However, many banks have failed to make similar changes, and nothing prevents banks from simply reversing these changes at any time.

The ANS to H.R. 4277 would require financial institutions to provide a disclosure of overdraft coverage fees and to notify consumers that if they do not opt in for overdraft coverage, their transaction may be declined, and they will not be charged a fee when those transactions are declined. It also requires financial institutions to provide information about available overdraft products, as well as the differences among each product's terms. Financial institutions would be required to warn consumers if completing a transaction at an ATM or branch may trigger an overdraft coverage fee including the amount of the fees. Furthermore, this bill would authorize the CFPB to issue rules and publish model disclosure forms within 18 months of the bill's enactment, and enacts a fee moratorium of 24 months. It also requires the CFPB to consider in its rule-making, the financial and economic impact of overdraft fees on low-income consumers.

This bill is supported by Americans for Financial Reform, Center For Responsible Lending, Consumer Action, Consumer Reports, National Consumer Law Center (on behalf of its low-income clients), U.S. PIRG, The Leadership Conference on Civil and Human Rights, and Consumer Federation of America.

**Section-by-Section:** [See Appendix C.](#)

#### **4. Amendment in the Nature of a Substitute to H.R. 4495, the "Downpayment Toward Equity Act of 2021" (Rep. Waters)**

**Summary:** The ANS to H.R. 4495 would authorize \$100 billion for a new HUD grant program to provide financial assistance to first-time, first-generation homebuyers to put towards a downpayment and other upfront costs to purchase a home. This funding would help address multigenerational inequities in access to homeownership and help close the racial wealth and homeownership gaps in the United States.

**Background:** Downpayment requirements and other upfront costs remain among the greatest barriers to entry for many first-time homebuyers, especially people of color who have been historically excluded from homeownership opportunities. Decades of overtly discriminatory policies endorsed by federal, state, and local governments to support race-based exclusion from homeownership have directly contributed to

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<sup>18</sup> CFPB, [Data Point: Overdraft/NSF Fee Reliance Since 2015 – Evidence from Bank Call Reports](#) (Dec. 2021).

<sup>19</sup> CFPB, [Consumer Financial Protection Bureau Launches Initiative to Save Americans Billions in Junk Fees](#) (Jan. 26, 2022).

<sup>20</sup> See Ally Financial, [No overdraft fees. More overdraft coverage](#) (Accessed Mar. 16, 2022); Alliant Credit Union, [You should never pay overdraft fees again](#) (Aug. 12, 2021); American Banker, [Citi poised to become largest bank to eliminate overdraft fees](#) (Feb. 24, 2022); Capital One, [Capital One Eliminates Overdraft Fees for Customers](#) (Dec. 1, 2021).

<sup>21</sup> Bank of America, [BoFA Announces Sweeping Changes to Overdraft Services in 2022, Including Eliminating Non-Sufficient Funds Fees and Reducing Overdraft Fees](#) (Jan. 11, 2022); See also, CFPB [Comparing overdraft fees and policies across banks](#) (Feb. 10, 2022).

<sup>22</sup> CFPB, [CFPB Overdraft Chart](#) (Feb. 2022).

<sup>23</sup> Acting Comptroller Michael Hsu, [Don't be the last banker to update your overdraft program](#), American Banker (Mar. 28, 2022).

the current racial wealth gap because homeownership is the primary way in which households in America build wealth. The net wealth of the average Black and Latinx family is between 15 and 20 percent of that of the average White family.<sup>24</sup> As the Black-White homeownership gap has reached a 120-year high, it is only expected to worsen without significant policy intervention.<sup>25</sup>

According to an Urban Institute analysis, targeting downpayment assistance to first-generation homebuyers could reach approximately 6 million eligible homebuyers who are disproportionately Black or Latinx.<sup>26</sup> Researchers have also found that the targeted eligibility requirements in this bill will negate the potential for systemic home price inflation caused by increased demand, especially in housing markets where there is currently adequate supply.<sup>27</sup>

This bill is supported by over 100 stakeholders, including the following organizations: National Housing Conference, National Fair Housing Alliance, Center for Responsible Lending, National Urban League, National Housing Resource Center, Mortgage Bankers Association, National Association of Realtors, National Council of State Housing Agencies, National Consumer Law Center (on behalf of its low-income clients), PolicyLink, UnidosUS, The Leadership Conference on Civil and Human Rights, Prosperity Now, ROC USA, Grounded Solutions Network, Center for Community Progress, RESULTS, National Community Reinvestment Coalition, National Coalition for Asian Pacific American Community Development (National CAPACD), Asian Real Estate Association of America, RESULTS, ROC USA, Veterans Association of Real Estate Professionals, National Community Stabilization Trust, Homeownership Alliance, National Association for Latino Community Asset Builders, Habitat for Humanity International, Massachusetts Affordable Housing Alliance, California Reinvestment Coalition, Americans for Financial Reform, Housing Opportunities Made Equal of Virginia, Inc., Louisiana Fair Housing Action Center, Community Service Programs of West AL, Administration of Resources and Choices, Family Housing Resources, Inc., Greater Phoenix Urban League, Newtown Community Development Corporation, Take Charge America, Inc., Trellis, Community Housing Council of Fresno, Homeownership Council of America, Ventura County Community Development Corporation, Latino Economic Development Center, National NeighborWorks Association, NFCC - National Foundation for Credit Counseling, Delaware Federation of Housing Counselors, Inc., Neighborhood House Inc, Affordable Homeownership Foundation Inc., Debthelper.com, Neighborhood Housing Services of South Florida, Inc., St. Petersburg Neighborhood Housing Services, Inc. dba Neighborhood Home Solutions, Economic Opportunity for Savannah-Chatham County Area, Inc, Morningstar Urban Development Inc, Sconiers Homeless Preventive Organization Inc, Southwest Georgia United Empowerment Zone, Inc., Housing Action Illinois, Madison County Urban League Inc, Universal Housing Solutions CDC, HomesteadCS, CHAPA, MA Affordable Housing Alliance, Arundel Community Development Services, Inc, Centro de Apoyo Familiar, Neighborhood Housing Services of Baltimore, Avesta Housing HomeOwnership Center, Coastal Enterprises, Inc., Greater Kansas City Housing Information Center, Kalamazoo Neighborhood Housing Services, Minnesota Homeownership Center, Washington County (MN) Community Development Agency, Greater Kansas City Housing Information Center, Financial Pathways of the Piedmont, Monroe Union County CDC, Sandhills Community Action Program, Inc., Family Housing Advisory Services, Omaha 100 Incorporated, Central Jersey Housing Resource Center Corp., Consumer Credit and Budget Counseling, Inc d/b/a National Foundation for Debt Management, New Jersey Citizen Action, CCCS of Buffalo, Opportunities for Otsego, Inc., Rockaway Development &

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<sup>24</sup> Federal Reserve, [\*Wealth Inequality and the Racial Wealth Gap\*](#) (Oct.22, 2021).

<sup>25</sup> Urban Institute, [\*By 2040, the US Will Experience Modest Homeownership Declines. But for Black Households, the Impact Will Be Dramatic.\*](#) (Jan. 21, 2021).

<sup>26</sup> Urban Institute, [\*Down Payment Assistance Focused on First-Generation Buyers Could Help Millions Access the Benefits of Homeownership\*](#) (Apr. 7, 2021).

<sup>27</sup> Urban Institute, [\*An Essential Role for Down Payment Assistance in Closing America's Racial Homeownership and Wealth Gaps\*](#) (Apr. 2021).



Revitalization Corporation, Affordable Housing Centers of Pennsylvania, Clarifi, Mt. Airy CDC (Community Development Corporation), NWCS, Inc., Knoxville Area Urban League, Housing Channel, Marshall Housing Authority, SouthFair Community Development Corp., Piedmont Housing Alliance, Housing Action Illinois, Massachusetts Fair Housing Center, Inc.

**Section-by-Section:** [See Appendix D.](#)

## **5. Amendment in the Nature of a Substitute to H.R. 4586, the "Risk-Based Credit Examination Act" (Rep. Wagner)**

**Summary:** The bill would provide discretion to the Securities and Exchange Commission (SEC) to prioritize its examination process of credit rating agencies as it deems appropriate. It does not remove the requirement that the SEC examine credit rating agencies annually.

**Background:** SEC currently examines all SEC-registered nationally recognized statistical rating organizations (NRSROs) annually. This examination process includes a review of Congressionally-mandated components, including whether the NRSRO appropriately manages conflicts of interest, has adequate internal supervisory controls, and processing of complaints. This requirement to review every component delineated in the Dodd-Frank Act (at least nine distinct components) has caused the SEC to repeatedly examine for areas of operations of the NRSROs that do not undergo changes year-to-year, causing the SEC to ineffectively expend resources. The bill would give discretion to the SEC to prioritize the components of this annual review based on risk.

**Section-by-Section:** [See Appendix E.](#)

## **6. Amendment in the Nature of a Substitute to H.R. 5912, the "Close the ILC Loophole Act" (Rep. C. Garcia)**

**Summary:** This bipartisan bill would eliminate a regulatory exemption allowing commercial firms to operate FDIC-insured banks as industrial loan companies (ILCs) without being subject to the same consolidated supervision or other requirements that traditional banks are subject to pursuant to the Bank Holding Company Act (BHCA). This bill also grandfathers existing ILCs to allow them to continue operating and to be sold to other entities, subject to certain limitations, and allows pending applications for an ILC to be considered for approval before September 2023.

**Background:** ILCs are state-chartered banks similar to traditional commercial banks. ILCs can originate loans, process payments, and take deposits insured by the FDIC.<sup>28</sup> While they are not allowed to offer checking accounts, ILCs often offer "negotiable order of withdraw" (NOW) accounts, which are functionally equivalent to a checking account from a consumer's perspective. First created in 1910 to lend to an underserved niche market of industrial workers, the popularity and uses of ILCs have varied significantly over the past century, as has how they have been regulated.<sup>29</sup> Today, there are 24 depository ILCs, chartered by a handful of states including California, Hawaii, Minnesota, Nevada, and Utah.<sup>30</sup> ILCs are regulated by both the state in which they are chartered and by the FDIC for compliance with requirements pertaining to safety and soundness, anti-money laundering and Bank Secrecy Act

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<sup>28</sup> See CRS, [Industrial Loan Companies \(ILCs\): Background and Policy Issues](#) (Sept. 9, 2020); CRS, [An Analysis of Bank Charters and Selected Policy Issues](#) (Jan. 21, 2022).

<sup>29</sup> James Barth and Yanfei Sun, [A New Look at the Performance of Industrial Loan Companies and Their Contribution to the US Banking System](#), University of Utah, Utah Center for Financial Services, at p. 7-19 (Jan. 2018).

<sup>30</sup> Data from FDIC staff as of May 12, 2022. Also see FDIC, [Parent Companies of Industrial Banks and Industrial Loan Companies](#) (Feb. 23, 2021). Following the FDIC rulemaking, EnerBank was acquired by Regions Bank, reducing the number of ILCs to 24. See Regions Bank, [Regions Bank Closes on its Acquisition of Home Improvement Lender EnerBank USA](#) (Oct. 1, 2021).

obligations, community reinvestment, and consumer protection. An ILC's parent company must serve as a source of strength for the bank, and the parent company is subject to oversight by the FDIC.<sup>31</sup>

Despite offering equivalent (or functionally equivalent) services and products as traditional banks, ILCs are not subject to consolidated supervision by the Federal Reserve (the Fed) under the BHCA. Notably, entities subject to the BHCA are intentionally restricted from operating in commercial enterprises (nonfinancial activities like manufacturing or selling goods and services); this restriction reflects the principle of separation of commerce and banking.

ILC opponents argue that allowing banks to participate in commercial activities could expose the financial system to unnecessary risk, and may incentivize a bank to make decisions benefiting the non-financial subsidiary at the possible detriment to the safety and soundness of the bank.<sup>32</sup> Additionally, ILC opponents argue such a blend of financial and nonfinancial business could lead to monopolistic behavior in which companies without a financial institution subsidiary may find it more difficult to compete with ones that do. Treasury Secretary Janet Yellen affirmed this view in testimony to the Committee on March 12, 2022, when she said, "when a commercial company owns a bank...credit decisions can be influenced by issues other than banking and safety and soundness considerations because of incentives that come from the other part of the business, the commercial part of the business. In addition, this tends to diminish competition and to promote monopoly and market power and that's probably more important than it ever was before."<sup>33</sup> Such concerns were heavily debated when Walmart and Home Depot unsuccessfully pursued ILC charters in 2005 and 2006.<sup>34</sup> After receiving more than 13,000 public comment letters, the FDIC announced a moratorium on ILC deposit insurance in 2006 which was subsequently extended until 2008.<sup>35</sup> Congress adopted another moratorium in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which expired in 2013.<sup>36</sup> Even after the expiration of the statutory moratorium, the FDIC did not approve any ILC applications until March 2020 when it granted deposit insurance to Square Financial and Nelnet Bank.<sup>37</sup> Several other companies have filed applications for ILC deposit insurance.<sup>38</sup> Additionally, the FDIC issued a final rule on the process and safety and soundness requirements for ILC deposit insurance applications in December 2020.<sup>39</sup>

Proponents of ILCs argue that ILCs are financially sound and that allowing companies to engage in both commerce and banking would create market efficiencies based on economies of scale and scope.<sup>40</sup> While no ILCs have failed in recent years, 13 ILCs failed between 1982 and 1984, and two ILCs that engaged in subprime lending also failed in 1999 and 2003.<sup>41</sup> Additionally, the Fed noted in a 2016 report to Congress

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<sup>31</sup> FDIC, [FDIC Approves Rule to Ensure Safety and Soundness of Industrial Banks](#) (Dec. 15, 2020).

<sup>32</sup> Kenneth Spong and Eric Robbins, [Industrial Loan Companies: Growing Industry Sparks a Public Policy Debate](#), Federal Reserve Bank of Kansas City, Economic Review, at p. 59-61 (2007).

<sup>33</sup> Full Committee hearing, [The Annual Report of the Financial Stability Oversight Council](#) (May 12, 2022).

<sup>34</sup> See Joe Adler, [When Walmart wanted a bank](#), American Banker (Aug. 23, 2017); Kevin K. Nolan, [Wal-Mart's Industrial Loan Company: The Risk to Community Banks](#), UNC School of Law, North Carolina Banking Institute (2006); Shaheen Pasha, [Coming Soon: A Walmart Bank?](#), CNN Money (Oct. 27, 2005).

<sup>35</sup> CRS, [Industrial Loan Companies \(ILCs\): Background and Policy Issues](#) (Sept. 9, 2020).

<sup>36</sup> *Id.*

<sup>37</sup> FDIC, [FDIC Approves the Deposit Insurance Application for Nelnet Bank](#), Salt Lake City, Utah Area (Mar. 18, 2020); FDIC, [FDIC Approves the Deposit Insurance Application for Square Financial Services, Inc.](#), Salt Lake City, Utah (Mar. 18, 2020).

<sup>38</sup> CRS, [Industrial Loan Companies \(ILCs\): Background and Policy Issues](#) (Sept. 9, 2020).

<sup>39</sup> FDIC, [FDIC Approves Rule to Ensure Safety and Soundness of Industrial Banks](#) (Dec. 15, 2020). The Dodd-Frank Act required the FDIC to mandate parent companies of ILCs to "serve as a source of financial strength" to the depository institution, 12 U.S.C. §1831o-1(b).

<sup>40</sup> James Barth and Yanfei Sun, [A New Look at the Performance of Industrial Loan Companies and Their Contribution to the US Banking System](#), University of Utah, Utah Center for Financial Services (Jan. 2018).

<sup>41</sup> Arthur E. Wilmarth Jr., [The FDIC Should Not Allow Commercial Firms to Acquire Industrial Banks](#), George Washington University Law School (May 2020).

that several companies that failed or required assistance during the 2008 financial crisis owned ILCs,<sup>42</sup> and one expert testified to the Committee that “parents and affiliates of several prominent ILCs did not serve as sources of strength during the financial crisis of 2007 and 2008. Instead, these conglomerates required billions of dollars of extraordinary government assistance, including by the FDIC.”<sup>43</sup>

The Committee has held several hearings examining this legislation.<sup>44</sup> The ANS to H.R. 5912 would establish a permanent moratorium on any new ILC charters while grandfathering existing ILCs. Section 4 of the bill would permit a grandfathered ILC (i.e., one that had obtained deposit insurance on or before September 23, 2021) to be acquired by another firm, but subject to strict limitations that are designed to help ensure that the nature of the ILC does not fundamentally change after the acquisition. Several of these limitations are based on those applied to “grandfathered” nonbank banks when the nonbank bank loophole was closed in the Competitive Equality in Banking Act of 1987. Any change of control under this exception would have to be approved by the Financial Stability Oversight Council (FSOC), which would have to determine that the transaction would not present financial stability risks, undermine consumer or investor protection, reduce competition, or erode the restrictions on the mixing of banking and commerce. Additional language has been added to clarify that the transferred ILC may continue to innovate and use new methods and technologies in providing similar products and services it consistently offered before the transfer.

This bill is supported by the following organizations: Americans for Financial Reform (AFR), Bank Policy Institute (BPI), Center for Responsible Lending (CRL), Consumer Federation of America (CFA), Credit Union National Association (CUNA), Independent Community Bankers of America (ICBA), Mid-Size Bank Coalition of America (MBCA), National Association of Federally-Insured Credit Unions (NAFCU), National Consumer Law Center (NCLC), National Community Reinvestment Coalition (NCRC), and U.S. PIRG.<sup>45</sup>

**Section-by-Section:** [See Appendix F](#)

## **7. Amendment in the Nature of a Substitute to H.R. 6528, the “Housing Temperature Safety Act of 2022” (Rep. Torres)**

**Summary:** The ANS to H.R. 6528 would establish a pilot at the Department of Housing and Urban Development to install and study the efficacy of temperature sensors in federally assisted housing to better ensure tenant health and safety.

**Background:** On January 9, 2022, a fire broke out at the Twin Parks North West apartment building, killing 17 Bronx residents in what was New York City’s deadliest fire in three decades.<sup>46</sup> All of the

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<sup>42</sup> Fed, OCC, FDIC, [Report to the Congress and the Financial Stability Oversight Council Pursuant to Section 620 of the Dodd-Frank Act](#) (Sep. 2016). Also see Arthur E. Wilmarth Jr., [The FDIC Should Not Allow Commercial Firms to Acquire Industrial Banks](#), George Washington University Law School (May 2020); and CRS, [Government Assistance for GMAC/Ally Financial: Unwinding the Government Stake](#) (Jan. 26, 2015).

<sup>43</sup> Subcommittee on Consumer Protection and Financial Institutions, *Banking Innovation or Regulatory Evasion? Exploring Trends in Financial Institution Charters*, (Apr. 15, 2021).

<sup>44</sup> Task Force on Financial Technology hearing, [License to Bank: Examining the Legal Framework Governing Who Can Lend and Process Payments in the Fintech Age](#) (Sep. 29, 2020); Subcommittee on Consumer Protection and Financial Institutions hearing, [Banking Innovation or Regulatory Evasion? Exploring Trends in Financial Institution Charters](#) (Apr. 15, 2021); and Subcommittee on Consumer Protection and Financial Institutions hearing, [The Future of Banking: How Consolidation, Nonbank Competition, and Technology are Reshaping the Banking System](#) (Sep. 29, 2021).

<sup>45</sup> Americans for Financial Reform, [News Release: Banks, Credit Unions and Consumer Groups Call for Passage of Bipartisan Solution to Close ILC Loophole](#) (Apr. 5, 2022).

<sup>46</sup> CNN, [The Worst Fires in New York City History Have Something in Common: Immigrant Victims](#), (Jan. 16, 2022).



victims, including 8 children, were determined to have died from smoke inhalation.<sup>47</sup> The 19-story apartment building includes 120 units, of which, 91 units were assisted with Housing Choice Vouchers (HCVs). The New York Fire Department reported the fire was caused by a malfunctioning space heater.<sup>48</sup> Previously, the building was cited by the city for issues related to its heating and ventilation systems that led to tenants relying on space heaters with tragic results.<sup>49</sup> Currently, in federally assisted housing, there is no widespread technology system used to monitor unit temperature to ensure compliance with minimum heating requirements. The ANS to H.R. 6528 would establish a pilot program at HUD to install and study the efficacy of temperature sensor technology in federally assisted housing to ensure units are maintaining proper temperature levels.

This bill is supported by the following organizations: Heat Seek

**Section-by-Section:** [See Appendix G.](#)

## **8. Amendment in the Nature of a Substitute to H.R. 6814, the "Small Business Fair Debt Collection Protection Act" (Rep. Lawson)**

**Summary:** The ANS to H.R. 6841 would amend the Fair Debt Collection Practices Act (FDCPA) to extend protections that are currently in place for consumers to guard against certain predatory debt practices, to also apply to small business borrowers. Specifically, it would expand the definition of debt to include debt incurred from small business loans, restrict the means and methods by which collectors can contact small business debtors, and limit actions of third-party debt collectors who attempt to collect debts on behalf of another person or entity.

**Background:** In 1977, Congress enacted the FDCPA in order to help curb abusive debt collection practices.<sup>50</sup> CFPB has authority to write regulations implementing the FDCPA. The agency also enforces the law, along with the Federal Trade Commission (FTC).<sup>51</sup> The FDCPA defines a debt collector as a third-party entity whose primary business is in collection or pursuing debts owed to a creditor. However, entities pursuing business debts (including debts of small businesses) are not covered by FDCPA. Therefore, small business loan borrowers do not enjoy the same protections individual consumers have under federal law. This leaves small business loan borrowers vulnerable to aggressive and even abusive debt collection practices, which takes their time, attention and resources away from supporting and growing their businesses. Some stakeholders have argued that small business borrowers should be treated fairly and respectfully throughout a collections process and have similar protections afforded to consumers under the FDCPA.<sup>52</sup>

In 2019, the *New York Times* investigated the harms experienced by taxi drivers with overvalued taxi medallion loans that have left thousands of drivers bankrupt.<sup>53</sup> The investigation found that some consumers looking to earn a living as taxi medallion operators were offered and signed contracts amounting up to \$1 million dollars. These lenders loosened standards and encouraged borrowers to refinance and take out more money when medallion prices rose. As was discussed in testimony by

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<sup>47</sup> CNN, [All 17 Victims of Bronx Apartment Fire, Including 2-year-old, Died of Smoke Inhalation, NYC Medical Examiner Rules](#), (Jan. 13, 2022).

<sup>48</sup> Wall Street Journal, [Bronx Fire: Space Heater, Faulty Door Play Roles in Deadly Outcome, Say Officials](#) (Jan. 10, 2022).

<sup>49</sup> BuzzFeed News, [The Bronx Apartment Building Where 17 People Died In A Massive Fire Had Open Safety Violations](#) (Jan 10, 2022).

<sup>50</sup> 15 USC §1692. Also see Congressional Research Service (CRS), [“The Fair Debt Collection Practices Act: Legal Framework,”](#) (June 10, 2019).

<sup>51</sup> CFPB and FTC, [“Fair Debt Collection Practices Act – CFPB Annual Report 2019,”](#) (March 2019).

<sup>52</sup> For example, see [the Small Business Borrowers’ Bill of Rights as proposed by the Responsible Business Lending Coalition](#).

<sup>53</sup> Brian Rosenthal, [“‘They Were Conned’: How Reckless Loans Devastated a Generation of Taxi Drivers,”](#) New York Times (May 19, 2019).

Bhairavi Desai, Executive Director of the New York Taxi Workers Alliance,<sup>54</sup> some lenders included confession of judgement provisions in the contracts. As taxi revenue fell, some lenders refinanced terms while others exercised confessions of judgments to garnish wages, seize medallions or other assets, and employed private debt collectors who reportedly harassed affected borrowers after they had defaulted.<sup>20</sup>

The ANS to H.R. 6841 would amend FDCPA to expand the definition of debt to include debt incurred from small business loans. It would define a small business debt to mean any loan obligation of a small business that is less than \$2,500,000. It would restrict the means and methods by which collectors can contact small business debtors, as well as the time of day and number of times contact can be made. Furthermore, it would limit actions of third-party debt collectors who are attempting to collect debts from small businesses on behalf of another person or entity.

This bill is supported by the following organizations: Responsible Business Lending Coalition, Small Business Majority, National Association of Latino Community Asset Builders.

**Section-by-Section:** [See Appendix H.](#)

## **9. Amendment in the Nature of a Substitute to H.R. 7195, “to provide for certain whistleblower incentives and protections” (Rep. Adams)**

**Summary:** This bill would modify the structure and function of the Financial Crimes Enforcement Network’s (FinCEN’s) recently mandated whistleblower program, ensuring that individuals who provide information that leads to successful enforcement are able to receive awards, as intended by the Anti-Money Laundering Act of 2020 (AMLA).

**Background:** To combat abuse of anti-money laundering (AML) laws and to bolster enforcement of Bank Secrecy Act (BSA) regulations, AMLA included a program that requires Treasury to pay awards to whistleblowers who provide original information leading to successful enforcement actions for violating the BSA and AML requirements. It also provides anti-retaliation protections for whistleblowers, outlines criteria for awards and program processes, and establishes an AML and counter-terrorism financing fund from which the awards can be made. FinCEN is the administering agency of the Treasury Department.

As currently written in the statute, awards are capped at 25% with no minimum for a successful claim. According to the National Whistleblower Center, “It is highly unlikely that persons with relevant information relating to illegal money laundering and financing terrorism will risk their livelihoods, reputations and the potential of high litigation costs without reasonable financial assurances.”<sup>55</sup> Further, without a guaranteed fee-covering incentive, it was reported that lawyers who specialize in representing potential whistleblowers were declining the cases.<sup>56</sup> This bill remedies this issue by ensuring that whistleblowers who reveal information on money laundering receive awards of 10% to 30% of the fines imposed due to their information.

This bill also creates the Financial Integrity Fund, a dedicated fund from the collected fines, ensuring that award money is there when it is needed rather than being tied to resolved appeals or to the Congressional appropriations process. To reinforce this improvement, the bill specifies that the fund may not be applied to cover agency personnel or administrative expenses. Additionally, the bill adds a provision that allows the award to be reduced if the whistleblower is collecting multiple awards from multiple agency whistleblower programs for related actions.

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<sup>54</sup> <https://financialservices.house.gov/uploadedfiles/hhrg-116-ba00-wstate-desai-20190926.pdf>

<sup>55</sup> National Whistleblower Center, [Countering Money Laundering](#) (last accessed Jun. 9, 2022).

<sup>56</sup> Wall Street Journal, M. Sun, [Anti-Money-Laundering Whistleblower Program Struggles to Get Off Ground](#) (May 18, 2021).

Finally, this bill expands the whistleblower program to three new statutes: the International Emergency Economic Powers Act, the Foreign Narcotics Kingpin Designation Act, and the Trading with the Enemy Act. These three statutes include nearly every enforcement action with penalties arising from a U.S. sanctions program, however, none currently have a whistleblower program.

This bill is supported by the following organizations: The National Whistleblower Center and Taxpayers Against Fraud.

**Section-by-Section:** [See Appendix I.](#)

#### **10. Amendment in the Nature of a Substitute to H.R. 7245, the “PCAOB Whistleblower Protection Act” (Rep. S. Garcia)**

**Summary:** The ANS to H.R. 7245 would create a whistleblower incentive and protection program at the Public Company Accounting Oversight Board (PCAOB), similar to the whistleblower program that exists at Securities and Exchange Commission (SEC).

**Background:** When Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, it created the SEC Whistleblower Program, which has been successful in supporting the SEC’s efforts to enforce U.S. securities laws.<sup>57</sup> H.R. 7245 would build on this success by creating a similar program at the PCAOB incentivize and protect whistleblowers, including accountants and auditors who are currently excluded from the SEC’s whistleblower program, to help identify accounting fraud. Under the bill, a tipster with original information on potential rules violations could receive a monetary reward for their information, between 10% and 30% of the monetary penalties imposed by the PCAOB when their tips result in a disciplinary proceeding and when the monetary penalties are more than \$250,000. The new whistleblower program would also provide anti-retaliation protection and confidentiality protection for the tipsters that come forward.

This bill passed the House last Congress on voice vote, and the text of the bill remains virtually identical to the version last Congress.

**Section-by-Section:** [See Appendix J.](#)

#### **11. Amendment in the Nature of a Substitute to H.R. 7977, the “Promoting Opportunities for Non-Traditional Capital Formation Act” (Rep. Waters)**

**Summary:** This bill would amend the Securities Exchange Act to require the Advocate for Small Business Capital Formation to provide educational resources and host events to promote capital raising options for traditionally underserved small businesses.

**Background:** Businesses led by women, people of color and those in rural areas face challenges when raising and securing capital. According to a recent study, between 2007 and 2017, Latino entrepreneurs were responsible for almost 50% of net new small business growth, yet they received just 1% of all investments from the top 25 venture capital and private equity firms over that time span.<sup>58</sup> Latino-owned businesses made up less than 1% (approximately \$680 million) of the \$487 billion invested across the top

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<sup>57</sup> See “The SEC Whistleblower Program is a Resounding \$5 Billion Success Story With a Bright Future,” Better Markets (January 20, 2022), available at <https://bettermarkets.org/newsroom/the-sec-whistleblower-program-is-a-resounding-5-billion-success-story-with-a-bright-future/>.

<sup>58</sup> Hernan Saenz, Tevia Segovia, Alex Noether, and Brenen Blair, “Closing the Capital Gap: Fueling the Promise of Latino-owned Businesses” Bain & Capital (Oct. 2021).

500 largest venture capital and private equity deals in 2020.<sup>59</sup> Similar disparities persist for Black entrepreneurs, who also receive about 1% of all venture capital funding.<sup>60</sup>

This bill would help address these disparities by expanding the role of the Office of the Advocate for Small Business Capital Formation, which was established in January 2019 under the SEC Small Business Advocate Act of 2016 to advance the interests of small businesses in utilizing SEC regulated products to access capital through the a capital markets.

This bill is supported by the following organizations: North American Securities Administrators Association (NASAA), NAACP, United States Chamber of Commerce, National Urban League, Small Business Investor Alliance (SBIA), and Color of Change

**Section-by-Section:** [See Appendix K.](#)

## **12. Amendment in the Nature of a Substitute to H.R. 7981, the “Public and Federally Assisted Housing Fire Safety Act of 2022” (Rep. Dean)**

**Summary:** The ANS to H.R. 7981 would require the installation of either tamper resistant or hardwired smoke alarms in federally assisted housing.

**Background:** On January 4, 2022, a fire broke out in a public housing unit in Philadelphia, Pennsylvania that claimed the lives of 12 residents, 8 of whom were children.<sup>61</sup> The property received a failing Real Estate Assessment Center (REAC) score in its last inspection in 2017.<sup>62</sup> A subsequent investigation by the Philadelphia Fire Department, working in collaboration with other federal and local agencies, identified fire safety concerns including non-functioning smoke alarms in the unit where the fire occurred. Specifically, officials found that the unit’s smoke alarms had either been removed from the walls or had no batteries inside.<sup>63</sup>

In 2015, HUD published the top 25 deficiencies in public housing, and missing or inoperable smoke alarms were among the deficiencies most often cited.<sup>64</sup> HUD reported 7,718 missing or inoperable smoke alarm deficiencies.<sup>65</sup> The 2015 data for multifamily housing shows a similar set of defects.<sup>66</sup> The ANS to H.R. 7981 seeks to address this issue by requiring either tamper resistant or hardwired smoke alarms to be installed in federally assisted housing. Specifically, for assisted units built prior to the enactment of H.R. 7981 that do not already have a hardwired smoke alarm, the bill would require the installation of tamper-resistant battery-powered smoke alarms that: 1) are sealed; 2) include a silencing mechanism; and 3) are able to provide notification for persons with hearing loss. For new or substantially rehabilitated units, the bill would require the installation of hardwired smoke alarms. The ANS would also require HUD to run a national educational campaign about housing health and safety requirements, and how to properly use fire safety features including smoke alarms.

This bill is supported by the following organizations: International Code Council, National Association of State Fire Marshals, National Low Income Housing Coalition

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<sup>59</sup> *Id.*

<sup>60</sup> Marlize van Romburgh and Gene Teare, “[Funding to Black Startup Founders Quadrupled in Past Year, but Remains Elusive](#),” Crunchbase News (July 13, 2021).

<sup>61</sup> New York Times, [18 People, a Deadly Fire: For Some, Crowded Housing is Not a Choice](#), (Jan. 8, 2022).

<sup>62</sup> [Letter from Chairwoman Maxine Waters et al. to HUD Secretary Marcia Fudge](#) (Jan 13, 2022).

<sup>63</sup> Philly Voice, [Smoke detectors inside apartment where deadly Fairmont fire started were inoperable, Philly fire commissioner says](#) (Jan. 11, 2022).

<sup>64</sup> HUD, [Top 25 RAPID 4.0 PIH Deficiencies](#) (accessed March 24, 2022).

<sup>65</sup> *Id.*

<sup>66</sup> HUD, [Top 25 RAPID 4.0 Multifamily Housing Deficiencies](#) (accessed June 9, 2022).

**Section-by-Section:** [\*See Appendix L.\*](#)



## **Appendix A: Section by Section for ANS to H.R. 68, the “Housing Fairness Act of 2020” (Rep. Green)**

### **Section 1. Short Title.**

- This section establishes the short title of the bill as the “Housing Fairness Act of 2022.”

### **Section 2. Testing for Discrimination.**

- This section amends the Housing and Community Development Act of 1987, which established the Fair Housing Initiatives Program (FHIP), and creates a National Testing Initiative for full-service fair housing organizations that meet the highest existing fair housing tester training and enforcement standards. This grant component is designed to fund collaborative investigations that address housing discrimination practices that have been observed at the regional and national level. This section also removes criminal liability for testers conducting full-application lending discrimination testing and authorizes full-application lending testing to allow for comprehensive enforcement of the Fair Housing Act.

### **Section 3. Fair Housing Initiatives Program.**

- This section amends the FHIP statute to ensure that only fair housing organizations that meet the eligibility requirements of a “Qualified Fair Housing Enforcement Organization” (QFHEO) are eligible for enforcement grants under the program to ensure grantees have the appropriate expertise to conduct sophisticated testing and investigative methodologies and take appropriate enforcement actions.
- This section also clarifies that education and outreach grants can be used to disseminate fair housing educational materials and content via websites and other media outlets. This section also clarifies that regional or local education and outreach grants can only be made to mission-driven nonprofit organizations.
- This section establishes that local and state government agencies may only qualify for FHIP grants if no other QFHEO exists in the area to apply for FHIP grants to ensure funds are used for their intended purpose of supporting the creation of a network of expert private nonprofit fair housing organizations to foster better compliance with the Fair Housing Act.
- This section also establishes that HUD must give priority to grant applications from a QFHEO in metropolitan statistical areas for which there are multiple applications to ensure that organizations with the highest fair housing investigation and enforcement capabilities receive grant funding.
- This section also authorizes FHIP funding at higher rates for fiscal years 2023-2027 and 2028-2033. For years 2023-2027, FHIP is authorized at \$77.5 million, including funding to support improved HUD IT systems for FHIP grant management. For fiscal years 2028-2033, FHIP is authorized at \$106 million.
- This section adds to existing HUD reporting requirements information about FHIP outcomes, including the number of housing units made available and accessible to protected classes under the Fair Housing Act through FHIP grant activities.
- This section also requires HUD to conduct a study to determine the feasibility, efficiency, and effectiveness of converting the FHIP program into a noncompetitive entitlement program in an effort to promote more stable funding fair housing enforcement.

### **Section 4. Sense of Congress**

- This section establishes a Sense of Congress.

### **Section 5. Grants to Public and Private Entities to Study Housing Discrimination.**

- This section establishes a new grant program to support efforts to conduct comprehensive studies on the causes and housing discrimination and segregation, and their effects on education, poverty, economic development, health, and other socioeconomic indicators or factors. The grant program would also support pilot programs to test solutions to eliminate barriers to fair housing and reduce residential segregation. This section authorizes the grant program at \$5 million annually for fiscal years 2023-2027.

#### Section 6. Limitation on Use of Funds.

- This section creates a standard prohibition on use of any funds made available under the Act for political activities, advocacy, or lobbying, or for travel expenses associated with those activities or the preparation or provision of advice on tax returns.

**Appendix B:** [Section by Section for ANS to H.R. 3111, the “Grandfamily Housing Act of 2021” \(Rep. McGovern/Pressley\)](#)

**Section 1. Short title.**

- This section establishes the short title of the bill as the “Grandfamily Housing Act of 2021.”

**Section 2. Grant Program for Grandfamily Housing.**

- This section would authorize \$100 million for fiscal years 2022 and 2023 to establish a two-year pilot grant program to assist nonprofit organizations and public housing authorities to assist intergenerational families. Grant funds would be awarded competitively. Grant funds may be used to cover costs associated 1) hiring service coordinators to provide onsite services to intergenerational families, including tutoring and afterschool care; 2) facilitating outreach to intergenerational families; 3) planning and providing services to intergenerational families, and 4) maintaining spaces for programming and services for intergenerational families. This section requires HUD to submit no later than a year after enactment of the act a report to Congress that describes the effectiveness of the program and recommendations to improve the program.

**Appendix C: [Amendment in the Nature of a Substitute to H.R. 4277, the “Overdraft Protection Act” \(Rep. Maloney\)](#)**

**Section 1. Short title.**

- The short title is the Overdraft Protection Act of 2022.

**Section 2. Findings and Purpose.**

- The section establishes findings and the purpose of this Act, which is to protect consumers by limiting abusive overdraft coverage fees and practices, and by providing meaningful disclosures and consumer choice in connection with overdraft coverage fees.

**Section 3. Fair Marketing and Provision of Overdraft Coverage Programs.**

- This section adds a new section 140B to the Truth in Lending Act, with the following subsections:
  - Section 140B(a). This subsection defines key terms relating to overdraft coverage for purposes of this new section 140B of TILA.
  - Section 140B(b). This subsection prohibits unfair or deceptive marketing to market overdraft coverage.
  - Section 140B(c). This subsection requires institutions to provide clear and conspicuous overdraft coverage disclosure in marketing materials. It requires the disclosure of overdraft coverage fees and requires institutions to notify consumers that if they do not opt-in for overdraft coverage, their transactions may be declined, and they will not be charged a fee when those transactions are declined.
  - Section 140B(d). This subsection prohibits institutions from charging overdraft fees unless a consumer has consented in writing for overdraft protection.
  - Section 140B(e). This subsection requires institutions to clearly disclose to consumers that they will be charged no more than one overdraft coverage fee per month, and no more than six overdraft coverage fees per calendar year, and that the institution retains the discretion to pay without charge or reject any other overdrafts incurred. It requires that the financial institution provide information about any overdraft products that are available and identify the differences in terms with respect to how the products differ.
  - Section 140B(f). This subsection requires institutions to clearly disclose the dollar amount of overdraft coverage fees and NSF fees charged to the consumer for the relevant period and year to date in periodic statements.
  - Section 140B(g). This subsection prohibits institutions from including the amount available under a consumer’s overdraft coverage program as part of the consumer’s account balance and requires institutions to display the account balance more prominently than any amount available under the overdraft coverage program.
  - Section 140B(h). This subsection requires institutions to promptly notify consumers, through a reasonable means selected by the consumer, when overdraft coverage has been accessed.
  - Section 140B(i). This subsection requires institutions to provide prompt notice, through a reasonable means selected by the consumer, if the institution terminates or suspends a consumer’s access to an overdraft coverage program, including a clear rationale for the action. This section requires institutions to warn the consumer if completing a transaction at an ATM terminal or branch teller may trigger overdraft coverage fees, including the amount of the fees.

- Section 140B(j). This subsection prohibits institutions from charging more than one overdraft coverage fee per month and more than six per year and requires that all overdraft coverage fees be reasonable and proportional to the amount of the overdraft and to the cost to the financial institution in providing the overdraft coverage for that transaction. The CFPB, in consultation with the financial regulators, may issue rules to provide an amount for any overdraft coverage fee that is presumed to be reasonable and proportional. Additionally, it requires institutions to post transactions in a manner that minimizes overdraft fees and nonsufficient fund fees.
- Section 140B(k). This subsection prohibits institutions from charging an overdraft coverage fee on any type of transaction if the overdraft results solely from a debit hold placed on an account that exceeds the actual dollar amount of the transaction.
- Section 140B(l). This subsection requires institutions to provide consumers who have not consented to overdraft coverage with the same terms and conditions as those who have consented to overdraft coverage, except for features of such overdraft coverage.
- Section 140B(m). This subsection prohibits institutions from charging NSF fees for any debit card transactions or any transactions at ATMs. It also requires the amount of any nonsufficient fund fee be reasonable and proportional to the cost to the financial institution directly associated with returning the transaction. The CFPB, in consultation with the financial regulators, may issue rules to provide an amount for any non-sufficient fund fee that is presumed to be reasonable and proportional.
- Section 140B(n). This subsection prohibits institutions from reporting consumers to a credit agency for overdrawing accounts if fees are paid under the terms of the overdraft program.
- Section 140B(o). This subsection prohibits construing any provision in Section 3 as prohibiting a depository institution from retaining the discretion to pay, without assessing an overdraft coverage fee or charge, an overdraft incurred by a consumer.

#### Section 4. Regulatory Authority of the Bureau.

- This section requires the CFPB to issue the final rules and publish model forms necessary to carry out section 140B of the TILA within 18 months.
- It also stipulates that in issuing rules and guidance, including any with respect to the calculation of annual percentage rates, the CFPB consider the impact on low-income consumers.

#### Section 5. Effective Date.

- This section states that the effective date of this Act is 2 years after its enactment.
- This section also imposes a 2-year moratorium on institutions increasing overdraft coverage fees or nonsufficient fund fees.



## Appendix D: Section by Section for ANS to H.R. 4495, the "Downpayment Toward Equity Act of 2021" (Rep. Waters)

### Section 1. Short title.

- This section establishes the short title for this division as the “Downpayment Toward Equity Act of 2021.”

### Section 2. Downpayment Program.

- This section would establish a grant program at the Department of Housing and Urban Development (HUD) to provide financial assistance for downpayment costs, closing costs, and cost to reduce the rates of interest of up to the greater of \$20,000 or 10% of the purchase price for first-time, first-generation homebuyers in connection with acquiring owner-occupied primary residences using an eligible mortgage loan. The Secretary may increase the maximum assistance for socially and economically disadvantaged homebuyers. States administering programs are allocated 75% of funds through a formula which is based on best available data to provide more funding to States with a higher approximate number of potential qualified homebuyers, as defined, and adjusted to reflect median area home prices. Eligible entities administering programs, including some Community Development Financial Institutions and Minority Depository Institutions, will receive 25% of authorized funds on a competitive basis. This section grants the Secretary with authority to determine in certain circumstances whether to recapture and reallocate funds that remain available to a grantee.

### Section 3. Qualified Homebuyers.

- This section establishes that homebuyers must meet certain eligibility requirements. Homebuyers must have an income that is equal to or less than 120 percent of the area median income (AMI) for either the area where the home being purchased is located or the area where the homebuyers' place of residence is located. For homebuyers in high-cost areas, the income limit is raised to 140 percent of the AMI for the area in which the home is being purchased. An eligible homebuyer must be a first-time homebuyer, meaning that they have not held property ownership in the last 3 years, and must be a first-generation homebuyer, meaning that their parents or guardians and spouse or domestic partner do not have any present ownership interest in a residence in any State, excluding ownership of heir property or ownership of chattel. Any individual who was ever placed in foster care and meets the income requirements would be considered an eligible first-generation homebuyer.

### Section 4. Eligible Homes.

- This section would authorize a qualified homebuyer to purchase a residential property with 1 to 4 dwelling units, including cooperatives, condominiums, and manufactured homes, that will be occupied by the homebuyer as a primary residence. Under this section, homebuyer assistance is forgivable on a prorated basis up to five years on a principal residence, at which point the grant amount is 100% forgivable. This section also establishes certain hardship circumstances under which a homebuyer shall not be liable for repayment of assistance.

### Section 5. Eligible Mortgage Loans.

- This section would authorize the use of program funds to assist in the purchase of any home financed with a mortgage that is eligible for purchase by Fannie Mae or Freddie Mac, is made, insured, or guaranteed by the Federal Housing Administration (FHA), the U.S. Department of Agriculture (USDA), or the U.S. Department of Veteran Affairs (VA), is a guaranteed loan under HUD’s Section 184 program, or meets the definition of a qualified mortgage.

#### Section 6. Housing Counseling Requirement.

- This bill would provide 5% of appropriated funds for HUD-approved housing counseling agencies that help homebuyers complete the home purchase counseling program requirement to qualify for assistance. If a homebuyer is unable to complete a program within 30 days due to housing counseling agency capacity issues, the homebuyer may complete other adequate homebuyer education as an alternative requirement. All homebuyers are required to be made aware of post-purchase counseling opportunities. Any individual who receives a commitment for assistance under the program but whose mortgage application is denied, will be referred to a HUD-approved counseling agency for furthering counseling and requalification for assistance.

#### Section 7. Administrative Costs.

- This bill would allow States and eligible entities to use a portion of grant awards for administrative costs up to the limit specified by the Secretary.

#### Section 8. Reports.

- This bill would require the Secretary of HUD to submit a report of program performance and outcomes to Congress every fiscal year. The Secretary shall use no more than 1% of funds to assist States and eligible entities to develop the capacity to adhere to the requirements under this section and shall encourage States and eligible entities to consult with community-based and nonprofit organizations that have as their mission to advance fair housing and fair lending.

#### Section 9. Compelling Interest Study.

- The Secretary is authorized by this bill to survey and compile evidence to determine whether or not there is a sufficient history of discrimination in housing and the appropriate remedy to redress such historic discrimination. The Secretary shall make conclusions and recommendations based on the evidence and provide States and eligible entities granted awards under this Act an opportunity to modify their programs for assistance under this Act according to such recommendations.

#### Section 10. Definitions.

- This section provides definitions.

#### Section 11. Implementation.

- This section allows the Secretary to establish notice or mortgagee letter requirements that the Secretary determines are necessary for timely and effective implementation of the program and expenditure of funds appropriated, which requirements shall take effect upon issuance.

#### Sec. 12. Authorization of Appropriations.

- This bill authorizes \$100 billion, to remain available until expended.

**Appendix E:** [Section by Section for ANS to H.R. 4586, the "Risk-Based Credit Examination Act" \(Rep. Wagner\)](#)

**Section 1. Short title.**

- This section establishes the short title of the bill as “Risk-Based Credit Examination Act .”

**Section 2. Risk-based Examinations of Nationally Recognized Statistical Rating Organizations**

- This section amends Section 15E(p)(3)(B) of the Securities Exchange Act of 1934 to authorize the Commission to prioritize its annual examination of nationally recognized statistical rating organizations as appropriate.

**Appendix F: Section by Section for ANS to H.R. 5912, the “Close the ILC Loophole Act” (Rep. C. Garcia)**

**Section 1. Short title.**

- This section establishes the short title of the bill as the “Close the ILC Loophole Act.”

**Section 2. New Industrial Loan Companies Not Eligible for the Exemption from the Definition of a Bank.**

- This section amends the Bank Holding Company Act of 1956 (BHCA) to eliminate the exception from the law’s application to industrial loan companies (ILCs) and their parent companies, while grandfathering current ILCs as well as any potential ILC that had a pending application for deposit insurance on or before September 23, 2021, and is subsequently approved on or before September 23, 2023, pursuant to the approval process stipulated in this section.
- For potential ILCs that had a pending application for deposit insurance with the FDIC on or before September 23, 2021, the FDIC may still approve those before September 23, 2023, after providing a 90-day public comment hearing and a public hearing for the relevant parties and members of the public to share their views on the pending application. Such an application may only be approved with the support of at least 2/3 of the members of the FDIC board. The parent companies of the new entities would be subject to examination, supervision, and conditions that promote safety and soundness by the parent company’s primary financial regulator, or the FDIC if it does not have one.

**Section 3. Supervision of Parent Companies of Industrial Loan Companies.**

- This section codifies existing authority that the FDIC has to examine and require reports from the parent company of ILCs.
- This section also stipulates that for current ILCs, the FDIC must tailor its examinations and reporting requirements to the size, complexity, and nature of the business of a parent company.

**Section 4. Change of Control.**

- This section lays out requirements with respect to how ILCs may be merged or sold to another company. For example, the section permits ILCs to be sold to a bank at any time, subject to normal regulatory approvals.
- The section also allows grandfathered ILCs to be acquired by commercial firms, provided the ILC would be subject to limitations that ensure that the ILC does not fundamentally change after the acquisition, and the change is approved by 2/3 of FSOC (including FSOC Chairperson) if it determines that the transaction would not present financial stability risks, undermine consumer or investor protection, reduce competition, or erode the separation of banking and commerce.
  - The ILC would be limited to providing products and services that the bank consistently and lawfully offered prior to such a change of control, and parties involved with the change of control would have an opportunity for a hearing if FSOC determined any product or service was offered to evade this limitation. Moreover, this section makes clear the ILC may continue to innovate and use new methods and technologies in delivering products and services going forward.
  - Other limitations prohibiting cross-marketing and access to Fed services for the benefit of the parent company would also apply, similar to those placed on “grandfathered” nonbank banks when the nonbank bank loophole was closed in the Competitive Equality in Banking Act of 1987.
  - Building on existing approvals the FDIC must provide for any material change in an ILC’s business plan, this section stipulates FDIC must certify a 15% increase in the ILC’s size

will not undermine safety and soundness and remain consistent with the approval of the change of control.

Section 5. Reservation of Authority.

- This section clarifies that the FDIC retains existing authorities to enter into agreements with the ILC and its parent company affiliates.

Section 6. GAO Study.

This section requires the Government Accountability Office to complete a study within one year of enactment that examines the effects of ILCs, including on competitiveness and market structure within the U.S. economy.



**Appendix G:** [Section by Section for ANS to H.R. 6528, the “Housing Temperature Safety Act of 2022](#)

**Section 1. Short title.**

- This section establishes the short title of the bill as “Housing Temperature Safety Act of 2022”.

**Section 2. Temperature Sensor Pilot Program.**

- This section would require HUD to establish a pilot program to provide grants to public housing agencies (PHAs) and owners of federally assisted rental units to install and test the efficacy of temperature sensors to ensure those units remain in compliance with temperature requirements.
- HUD would be required to establish eligibility criteria within 120 days of enactment, designed to ensure the inclusion of diverse units, and to test the functionality of the selected sensors, including internet connectivity requirements.
- Grantee PHAs and unit owners would be required to install the sensors, with permission of the resident.
- This section requires non-personally identifiable data to be collected and retained for the duration of the pilot program and evaluation.
- HUD would be required to publicly publish and submit to Congress interim and final evaluations, within one year of the establishment of the program and one year of the conclusion of the program, respectively. The reports would examine the number of temperature-related complaints and violations before and after the installation of sensors, identify barriers to the use of such sensors, and compare the utility of various temperature sensor technologies across different regions.
- This section authorizes the expenditure of such sums as may be necessary to provide the grants, administer the pilot program, and provide technical assistance to participants.

**Appendix H:** [Section by Section for ANS to H.R. 6841, the "Small Business Fair Debt Collection Protection Act" \(Rep. Lawson\)](#)

**Section 1. Short title.**

- This section establishes the short title of the bill as “Small Business Fair Debt Collection Protection Act”.

**Section 2. Fair Debt Collection Practices for Loans to Small Businesses.**

- This section would amend the Fair Debt Collection Practices to expand the definition of debt to include debt incurred from small business loans.
- It would also define a small business to mean a “small business concern” under section 3 of the Small Business Act, and a small business debt to mean any loan obligation of a small business that is less than \$2,500,000.
- It would restrict the means and methods by which collectors can contact small business debtors, as well as the time of day and number of times contact can be made.
- It would limit the actions of third-party debt collectors who are attempting to collect debts from small business owners on behalf of another person or entity.

**Appendix I: Section by Section for ANS to H.R. 7195, “to provide for certain whistleblower incentives and protections” (Rep. Adams)**

**Section 1. Whistleblower Incentives and Protections.**

- Paragraph (a) amends Section 5323 of title 31 to:
  - Establish a minimum whistleblower award of 10% and a maximum of 30% of what has been collected of the monetary sanctions imposed in the action or related actions for awards.
  - Allow the program to pay awards less than the amount described when there are related actions in which a whistleblower may be paid by another whistleblower award program.
  - Establish the “Financial Integrity Fund” from which awards would be drawn, sourced from only for the payment of awards to whistleblowers and restricted from being used for program personnel or administrative expenses.
  - Apply parameters to the funds deposited into or credited from the Financial Integrity Fund and providing for exceptions for certain victim restitution funds.
  - Expand the “Covered Statutes” to include the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.); the Trading With the Enemy Act (50 U.S.C. 4305; 4312); and the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901 et seq.).
- Paragraph (b) provides technical and conforming amendments.

**Appendix J: Section by Section for ANS to H.R. 7245, the “PCAOB Whistleblower Protection Act” (Rep. S. Garcia)**

**Section 1. Short title.**

- This section establishes the short title of the bill as “PCAOB Whistleblower Protection Act of 2022.”

**Section 2. Whistleblower Incentives and Protection**

- Paragraph (1): This section includes definitions for, “Covered Proceeding” – disciplinary proceedings resulting in monetary sanctions that are above \$250,000; “Original Information”; “Monetary Sanctions”; “Whistleblower”;
- Paragraph (2): This section sets the parameters for awards to be given to whistleblowers – between 10 and 30 percent of collected monetary sanctions; it also sets the source of funds for awards – collected monetary sanctions;
- Paragraph (3): This section provides that the discretion for determination of award amounts rests with Board; criteria for determination of award amounts include significance of information, degree of assistance, programmatic interest of Board in deterring violations; this section also sets who shall be ineligible for awards (denial of awards) – examples include employees of regulatory and law enforcement agencies, etc.;
- Paragraph (4): This section addresses matters related to representation of award claimants, including: permitted representation (counsel); required representation (if anonymous submission), and mandatory disclosure of certain information about whistleblower (including identity) to Board prior to payment of award;
- Paragraph (5): This section sets that no contract with the Board would be required for receipt of award;
- Paragraph (6): This section sets the appeals process for award determinations.
- Paragraph (7): This section provides protections for whistleblowers, including: prohibition against retaliation; Enforcement of prohibition against retaliation – private cause of action provided; Relief – includes reinstatement, 2X back pay, with interest, litigation costs; Confidentiality – whistleblower identity confidential until required to be disclosed in public proceeding; Rights retained – preserves collective bargaining agreement rights of whistleblower
- Paragraph (8): This section sets parameters for disqualification from award for certain false information;
- Paragraph (9): This section grants rulemaking authority to the Board to implement the program;
- Paragraph (10): This section requires that the Board program coordinate its activities with SEC’s Office of Whistleblower.

**Section 3. Determination of Budgetary effects.**

This section or the purpose is to comply with the Statutory Pay-As-You-Go Act of 2010.

**Appendix K:** [Section by Section for ANS to H.R. 7977, the “Promoting Opportunities for Non-Traditional Capital Formation Act” \(Rep. Waters\)](#)

**Section 1. Short title.**

- This section establishes the short title of the bill as the “Promoting Opportunities for Non-Traditional Capital Formation Act”.

**Section 2. Promoting Capital Raising Options for Traditionally Underrepresented Small Businesses**

- This section amends Section 4(j)(4) of the Securities Exchange Act of 1934 by striking “and” in subparagraph (G); striking the period at the end of subparagraph (H) and including a semicolon; and by adding the following language at the end of the paragraph that requires the Office of the Advocate for Small Business Capital Formation in the SEC to provide educational resources and host events to promote capital raising options for traditionally underrepresented small businesses, including women-owned and minority-owned businesses and businesses in rural areas. Also requires the Office of the Advocate for Small Business Capital Formation to meet with representatives of State securities commissions annually to discuss opportunities to assist small businesses and small business investors.



**Appendix L: Section by Section for ANS to H.R. 7981, the “Public and Federally Assisted Housing Fire Safety Act of 2022” (Rep. Dean)**

**Section 1. Short title.**

- This section establishes the short title of the bill as “Public and Federally Assisted Housing Fire Safety Act of 2022”.

**Section 2. Smoke Alarms in Federally Assisted Housing.**

- This section requires the installation of tamper resistant or hardwired smoke alarms in federally assisted housing, including: public housing, tenant-based assistance units, project-based assistance units, supportive housing for the elderly, supportive housing for persons with disabilities, Housing Opportunities for Persons with AIDS (HOPWA)-funded units, rural housing, and Farm Labor Housing Direct Loans & Grants-funded units.
- For units built prior to the enactment of the bill that do not already have a hardwired smoke alarm, this section would require the installation of tamper-resistant battery-powered smoke alarms that: 1) are sealed; 2) include a silencing mechanism; and 3) are able to provide notification for persons with hearing loss.
- For new or substantially rehabilitated units, this section would require the installation of hardwired smoke alarms.

**Section 3. Fire Safety Educational Program.**

- This section requires HUD to run a national educational campaign about housing health and safety requirements, and how to properly use fire safety features including self-closing doors, smoke alarms, and carbon monoxide detectors. This section authorizes the expenditure of \$2M dollars for this program.